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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,603	03/29/2004	Patrick Joseph Corrigan	9382MX	2803

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/811,603	CORRIGAN, PATRICK JOSEPH	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 18 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 is vague and indefinite; it is not known what applicant intends to claim. What does applicant mean by adding a water soluble cation comprising adding a water insoluble cation. The steps contradict each other.

Claim 20 has the same problem as claim 18.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Fan et al

Fan et al disclose a method of producing food product. The method comprises the steps of forming a dough-based food product out of cereal components, adding a

calcium source to the dough-based food product and heating the dough based food product (see col. 2 lines 45-66). Suitable sources of calcium include calcium chloride, calcium lactate (see col. 4 lines 20-30. The cooking is done at high temperatures unher high pressure.

Fan et al disclose the steps as claimed. The preamble " for reducing the level of acrylamide" does not limit the claim because the body of the claim following the preamble is self-contained and does not depend on the preamble for completeness. The method comprises the step of adding a water-soluble multivalent cation to a dough-based food product before heating and this is the step disclosed by Fan et al. The cation in Fan et al is not complexed or chelated. The reduction in acrylamide in claim 16 is inherent because the same step is carried out.

Claims 1-7 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Walsh et al.

Walsh et al disclose a method of forming dough-based food product. The method comprises the steps of forming a dough comprising whey protein concentrate and edible polysaccharide, adding a calcium source to the dough, forming snack pieces from the dough and cooking the pieces to form snack. The calcium source used is calcium lactate, calcium chloride. (see col. 2 lines 27-65 and example 7 on col. 11)

The preamble " for reducing the level of acrylamide" does not limit the claim because the body of the claim following the preamble is self-contained and does not depend on the preamble for completeness. The method comprises the step of adding a water-soluble multivalent cation to a dough-based food product before heating and this

is the step disclosed by Walsh et al. The cation in Walsh et al is not complexed or chelated. The claims do not exclude the extrusion-cooking step of Walsh et al. After the pieces are formed, they are dried at 180 degree F for 30 minutes; this drying causes heating of the product which is equivalent to the claimed cooking step. With respect to claim 18, it is interpreted that a water insoluble calcium is added. Walsh et al disclose the calcium can be calcium carbonate which is a water insoluble calcium and pH adjusting agent such as acid is added. (see col. 2 lines 48-54 and col. 4 lines 8-9). The reduction in acrylamide in claim 16 is inherent because the same step is carried out.

Claims 8-12 and 14-15, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Baisier et al.

Baisier et al disclose a method of making fried comestibles. The method comprises the steps of coating raw potatoes with a mixture comprising amylose and calcium, blanching the potatoes, drying the potatoes and frying or parfrying the potatoes. The potatoes are cut to slices or strips. The calcium source includes calcium chloride, calcium lactate. (see col. 2 lines 46-67 and col. 3)

The preamble " for reducing the level of acrylamide" does not limit the claim because the body of the claim following the preamble is self-contained and does not depend on the preamble for completeness. The method comprises the step of adding a water-soluble multivalent cation to a food product before heating and this is the step disclosed by Baisier et al. The cation in Baisier et al is not complexed or chelated. With respect to claim 10, the food in Baisier et al is the same type of food claimed; thus,

it is inherent the food comprises asparagines. The food is mixed with the cation and a reaction time follow; thus, it is inherent the cation is allowed to complex.. The reduction is acrylamide in claim 17 is inherent because the same step is carried out.

Claims 8,13, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Villagran et al

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Villagran et al a process for forming comminuted potato product. The process comprises the steps of cooking the potato, forming a wet mash from the cooked potatoes, adding water soluble cation to the mash and drying the mashed. Calcium source such as calcium, carbonate, calcium chloride, calcium hydroxide can be added to the mash. Acids such as fumaric, ascorbic acid, etc.. can be added. (see col. 3 ines 45-60, col. 10 lines 64-67, col. 11 lines 23-25)

The preamble " for reducing the level of acrylamide" does not limit the claim because the body of the claim following the preamble is self-contained and does not depend on the preamble for completeness. The method comprises the step of adding a water-soluble multivalent cation to a food product and this is what Villagran et al

disclose. Villagran et al disclose both insoluble and soluble calcium. Thus, it meets both the limitation of claims 20 and claim 8.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Villigran et al.

Villigran et al do not disclose lactic acid. However, they disclose other acid can be used. Thus, it would have been an obvious matter of choice to use any known acid and lactic acid is well known.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh et al .

Walsh do not disclose calcium hydroxide and lactic acid. However, they do teach that both soluble and insoluble calcium can be used. In absence of showing of criticality

or unexpected result, it would have been an obvious matter of preference to use any known calcium source and acid .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 7, 2005

Lien Tran

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